TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 279.

SIDNEY A. STOCKDALE, COLLECTOR OF INTERNAL REVENUE, PLANTIFF IN ERROR,

vs.

WILLIAM E. SHROPSHIRE, SAMUEL M. TODD, AND S. N. MOODY, LIQUIDATING COMMISSIONERS OF THE PELICAN INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 27, 1872.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

LIQUIDATING COMMISSIONERS OF PELICAN Mutual Insurance Company
vs.
SIDNEY A. STOCKDALE.
} No. 6526.

Petition, affidavit, and order for writ of certiorari.—Filed October 20, 1871.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of S. A. Stockdale of New Orleans, Louisiana, with respect, shows: That he is an officer of the United States, to wit, collector of internal revenue for the first collection district of Louisiana,
2 duly appointed and acting under authority of an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," passed 30th June, 1864, and of acts in addition thereto and amendatory thereof; that the following entitled civil suits have been commenced against him by the plaintiffs therein named, in the fourth district court for the parish of Orleans, a court of the State of Louisiana, holding sessions in the city of New Orleans, viz:

No. 27817.	Bank of America	vice S. A. Stockdale	
27818.	Sun Mut. Ins. Co. of N. Orleans	"	"
27819.	Germania Ins. Co. " " "	"	"
27820.	Merchants' Mut. Ins. Co. "	"	"
27821.	Citizens' Bank "	"	"
27822.	Union Insurance Co. " "	"	"
27823.	New Orleans Mut. Ins. Co. "	"	"
27824.	Home Mut. Ins. Co. "	"	"
27825.	Liquidating Commissioners of Pelican Mut. Ins. Co. "	"	"
27826.	New Orleans Canal and Bank. Co.	"	"

That process of citation has been served upon him within this district in each of the said several suits, but no trial of any of said suits has been had.

3 That the said suits are severally instituted against petitioner for the purpose of recovering from him the amounts of money in the petitions in said suits set forth, and which are alleged to have been illegally assessed against and collected from the said plaintiffs, respectively, for internal-revenue taxes on dividends and surplus profits by them respectively made and declared for and during the periods therein mentioned.

Petitioner prays that writs of certiorari may be issued to the said fourth district court for the parish of Orleans requiring said court to send to this honorable court the records and proceedings in the several causes therein named.

(Signed) J. W. GURLEY,
Ass't United States Attorney.

4 *Affidavit.*

S. A. Stockdale, being sworn, says all the allegations in the foregoing petition are true.

(Signed) S. A. STOCKDALE.

Sworn to and subscribed before me this 20th day of October, 1871.

(Signed) F. B. VINOT,
D'y Clerk.

Certificate of counsel.

I certify that, as counsel for petitioner herein, I have examined the proceedings against him in the above-enumerated cases, and careful' inquired into all the matters set forth in his petition and believe the same to be true.

(Signed) J. W. GURLEY,
Ass't U. S. Att'y.

Order.

5 Presented to me at my office in the city of New Orleans this twentieth day of October, 1871, and, the court not being in session, a writ of certiorari is allowed and issued as prayed for.

(Signed) F. A. WOOLFLEY, *Clerk.*

14 Stat's, 171, § 67.

Writ of certiorari.

United States circuit court.

LIQUIDATING COMMISSIONERS OF PELICAN Mutual Insurance Company *vs.* S. A. STOCKDALE. } No. 6526.

United States circuit court.

LIQUIDATING COMMISSIONERS OF PELICAN Mutual Insurance Company *vs.* S. A. STOCKDALE. } No. 6526.

The President of the United States to the honorable the fourth district court for the parish of Orleans, greeting:

6 You are hereby commanded, in the name of the President of the United States of America and of the circuit court of the United States for the fifth circuit and district of Louisiana, to send to this honorable court the record and proceedings in the suit of Liquidating Commissioners of Pelican Mutual Insurance Company versus S. A. Stockdale, No. 27825 of the docket of said court.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at New Orleans, this twentieth day of October, 1871.

[SEAL.] (Signed) F. A. WOOLFLEY.
Clerk of the U. S. Circuit Court.

Marshal's return.

Received October twenty-first, 1871, by the United States marshal, and, the twenty-fourth day of October, 1871, served a copy of this writ of certiorari, with petition accompanying the same, in the fourth district court of the parish of Orleans, by handing them to George
7 Fernald, the clerk of said court, at his office in this city.

(Signed) S. W. REED,
D'y U. S. Marshal.

No. 6526. United States circuit court.

Record from fourth district court.—Filed January 12, 1872.

No. 27825. Fourth district court for the parish of Orleans.

W. E. SHROPSHIRE AND ALS., LIQUIDATING commissioners of the Pelican Mutual Insurance Company,
vs.
S. A. STOCKDALE.

Petition.

Filed Oct. 9, '71.
(Sig'd) F. WALL, *D'y Clk.*

W'M E. SHROPSHIRE, SAMUEL M. TODD, AND S. N. Moody, liquidating commissioners of the Pelican Mutual Ins. Co.,
vs.
SIDNEY A. STOCKDALE.

To the honorable the fourth district court for the parish of Orleans, State of Louisiana:

The petition of William E. Shropshire, Samuel M. Todd, and
8 S. N. Moody, as liquidating commissioners of the Pelican Mutual Insurance Company, duly elected and qualified as liquidating commissioners of said company, which said company was incorporated under the laws of Louisiana, and domiciled in the city of New Orleans, in said State, respectfully shows that Sidney A. Stockdale, residing at the same place, is indebted unto your petitioners, as liquidating commissioners aforesaid, in the sum of ($550,) five hundred and fifty dollars and cents, with interest thereon at the rate of five per cent. per annum, from the nineteenth day of January, A. D. 1870, until paid; for this, to wit:

That, on or about the tenth day of January, A. D. 1870, said Pelican Mutual Insurance Company declared a dividend amounting to the sum of eleven thousand dollars, which dividend was payable on and after the first day of March, 1870.

And on or about the nineteenth day of January, 1870, said Sidney A. Stockdale, defendant, being collector of United States internal revenue in and for the first collection district of the State of Louisiana, did,
9 then and there, unlawfully and wrongfully, demand from said Pelican Mutual Insurance Company the sum of five hundred and fifty dollars and cents, as an alleged tax which he claimed was due

to the United States by reason of an assessment by B. F. Joubert, assessor of United States internal revenue for said district, of five per cent. upon said dividend of said Pelican Mutual Insurance Company, which demand was accompanied by a threat of seizure and sale of said company's property, for the purpose of collecting said alleged tax, with penalties, if the same were not paid within the delay specified; wherefore said company paid the sum aforesaid to said defendant, the nineteenth day of January, 1870.

Your petitioners, as liquidating commissioners aforesaid, aver that said assessment and collection of said sum of money alleged to be a tax, was wholly without warrant or authority in law.

Your petitioner avers that, as liquidating commissioner aforesaid, said company was without authority to with'old said alleged tax from said dividend of said company, and therefore said company paid
10 the same in full to the persons entitled thereto, prior to said alleged tax being demanded.

Your petitioners, as liquidation commissioners aforesaid, aver that, "according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof," said company appealed to the Commissioner of Internal Revenue for, and demanded the refunding and return to it of, said sum of money, so as aforesaid wrongfully and illegally demanded and collected from said company by said defendant; and said Commissioner, on the fifteenth day of April, 1871, rejected said demand, within six months prior to the commencement of this suit.

Wherefore your petitioners, as liquidating commissioners aforesaid, pray that said defendant, Sidney A. Stockdale, be cited to answer this demand, and that, after due proceedings had, he be condemned to pay your petitioners as liquidating commissioners aforesaid, the sum of five hundred and fifty dollars and cents, with legal interest from the nineteenth day of January, 1870, until paid, and costs of suit.

11 And petitioner prays for general relief.

(Signed) CASE AND ROUSE,
Attorneys for Petitioner.

Fourth district court for the parish of Orleans.

W. E. SHROPSHIRE ET ALS., LIQUIDATING COMMISSIONERS of the Pelican Mut. Ins. Co.,
vs.
S. A. STOCKDALE. } No. 27825.

CASE AND ROUSE, *Attorneys:*

Copy of petition and citation inside to be served on S. A. Stockdale, New Orleans.

Filed Oct. 13, 1871.

(Sig'd) F. WALL, *D'y Clk.*

Citation.

State of Louisiana, fourth district court for the parish of Orleans, in the city of New Orleans.

W. E. SHROPSHIRE ET ALS., LIQUIDATING COMMISSIONERS of the Pelican Mut. Ins. Co.,
vs.
S. A. STOCKDALE. } No. 27825.

Mr. S. A. STOCKDALE:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver
12 your answer to the same in the office of the clerk of the fourth district court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable Paul E. Theard, judge of the said court, the 10th day of October, in the year of our Lord 1871.

(S'g'd) W'M H. CARSON, *D'y Clerk.*

Court-house, opposite Jackson square, corner Chartres and St. Anthony's alley, up stairs.

Sheriff's return.

Received Oct. 11, 1871, and, on the 12th of Oct., 1871, served a copy of the within citation and accompanying petition on S. A. Stockdale, through N. Burbank, esq., chief deputy collector, who represents him, in person, the within Mr. Stockdale being out of town at the time of said service. Ret. same day.

(S'g'd) A. LABAT, *D'y Sh'ff.*

Fourth district court for the parish of Orleans.

W. E. SHROPSHIRE ET ALS., LIQUIDATING COMMISSIONERS, *vs.* S. A. STOCKDALE. } No. 27825.

13 CASE AND ROUSE, *Attorneys:*

Copy of petition and citation inside to be served on S. A. Stockdale.

Filed Oct. 17, 1871.

(Sig'd) F. WALL, *D'y Cl'k.*

Citation.

State of Louisiana, fourth district court for the parish of Orleans, in the city of New Orleans.

W. E. SHROPSHIRE ET ALS., LIQUID'G COMMISS'S *vs.* S A. STOCKDALE. } No. 27825.

Mr. S. A. STOCKDALE:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable Paul E. Theard, judge of the said court, the 14th day of October, in the year of our Lord 1871.

(Sig'd) F. WALL, *Deputy Clerk.*

Court-house, opposite Jackson square, corner Chartres and St. Anthony's alley, up stairs.

14 *Sheriff's return.*

Received, Oct. 14, 1871, and, on the same day, month, and year, served copy of the within citation and accompanying petition on S. A. Stockdale in person. Ret. same day.

(Sig'd) J. H. MEILLEUR,
D'y Sheriff.

No. 6526. United States circuit court.

PELICAN MUTUAL INSURANCE COMPANY
vs.
S. A. STOCKDALE, COLL'R. X. X. } No. 6526.

Answer.—Filed April 15, 1872.

Circuit court of the United States for the fifth circuit and district of Louisiana.

PELICAN MUTUAL INSURANCE COMPANY
vs.
S. A. STOCKDALE, COLL'R. X. } No. 6526.

Now comes the defendant, S. A. Stockdale, and, for answer to plaintiff's petition, denies all and singular the allegations therein contained, and prays to be hence dismissed, with costs.

(Sig'd) J. R. BECKWITH,
U. S. Att'y, for Def'd't.

15 No. 6526. United States circuit court.

PELICAN MUTUAL INSURANCE CO.
vs.
S. A. STOCKDALE. } No. 6526.

Statement of facts.—Filed April 15, 1872.

United States circuit court, fifth circuit and district of Louisiana.

WILLIAM E. SHROPSHIRE, SAMUEL M. TODD, and S. N. Moody, liquidating commissioners of the Pelican Mutual Insurance Company,
vs.
SIDNEY A. STOCKDALE. } No. 6526.

STATEMENT OF FACTS.

And, afterwards, on the fifteenth day of April, 1872, of the November term, 1871, of said court, in open court, came as well the said plaintiff, by Case and Rouse, and the said defendant, by honorable J. R. Beckwith, United States attorney, and, having waived a trial by jury, agreed upon and submitted to the court the following statement of facts involved in this cause, that is to say:

16 1st. That the Pelican Mutual Insurance Company was a body corporate, duly created under the laws of the State of Louisiana, and domiciled in said State; that, some time prior to the commencement of this suit the said corporation went into voluntary liquidation, pur-

suant to the laws of said State, and the said William E. Shropshire, Samuel M. Todd, and S. N. Moody, were duly elected and qualified pursuant to said laws, as liquidating commissioners of said corporation, and as such are authorized to bring this action; and that said corporation, from the 1st day of January, 1868, carried on the business of fire and marine insurance at New Orleans aforesaid.

2d. That, on the tenth day of January, 1870, said insurance company declared a dividend of its earnings which had accrued to said corporation during the calendar year ending December thirty-first, 1869, amounting to the gross sum of eleven thousand dollars, which
17 dividend was payable on the first day of March, 1870, in script, without deduction of any tax.

3d. That, on the twelfth day of January, 1870, and upon demand of B. F. Joubert, assessor of internal revenue for the first collection district of Louisiana, said insurance company made a return to him of said dividend.

4th. That said assessor of internal revenue assessed against said insurance company an alleged internal-revenue tax on said dividend, at the rate of five per centum, said assessment amounting to the sum of five hundred and fifty dollars, and returned the same upon his monthly list of assessments for the month of January, 1870, to said defendant, collector of internal revenue as aforesaid, for collection.

5th. That defendant, collector as aforesaid, demanded payment of the sum so as aforesaid assessed from said insurance company, and notified said insurance company that if the same were not paid *that* he would distrain upon and sell said company's property to make
18 such tax; and, thereupon, said insurance company on the nineteenth day of January, 1870, paid to said defendant, collector as aforesaid, the sum demanded as such tax, to wit, the sum of five hundred and fifty dollars.

6th. That said plaintiff, commissioners as aforesaid, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, then in force, appealed to the Commissioner of Internal Revenue, and demanded the refunding and return to said plaintiff, commissioners as aforesaid, of said sum of five hundred and fifty dollars, so as aforesaid paid to said defendant; that said Commissioner rejected said appeal and refused to allow said sum of money to be refunded to said plaintiff, commissioners as aforesaid; and by mailing a notice thereof at Washington, D. C., on the sixth day of April, 1871, officially informed said defendant of such rejection; but plaintiff was only notified thereof by notice mailed in Washington on the 15th
19 day of April, 1871, both of said notices being received by the respective parties in the due course of mail, to wit, in four days from the date of the mailing thereof; and this suit was commenced within one year from the date of said appeal.

7th. That said sum of money paid by said insurance company to defendant, collector as aforesaid, has, in the due and regular course of business in the office of said defendant, been paid into the Treasury of the United States.

And having so agreed upon said facts as herein stated, said plaintiffs, commissioners as aforesaid, and said defendant, by their said respective attorneys, did, then and there, respectively, pray the judgment of the court in the premises.

(Signed) CASE AND ROUSE,
Atty's for Plaintiff.

(Signed) J. R. BECKWITH,
U. S. Attorneys, for Defendant.

20 No. 6526. United States circuit court.

Order: Continuance.—Extract from the minutes.

November term, 1871.

NEW ORLEANS, *Monday, April 15th*, 1872.

Court met pursuant to adjournment. Present, honorable E. H. Durell, district judge.

LIQUIDATION COMMISSIONERS OF PELICAN Mut. Ins. Co. *vs.* S. A. STOCKDALE. } No. 6526.

The counsel in the above case having filed statement of facts, it was ordered that the matter be argued on to-morrow, at 11 a. m.

Submission of cause.—Extract from the minutes of April 16, 1872.

LIQUIDATION COMMISSIONERS OF PELICAN Mut. Ins. Co. *vs.* S. A. STOCKDALE. } No. 6526.

21 The above cause came up for trial before the court, the parties having, in writing, waived the jury:

And, after hearing the argument of counsel on both sides, the court took time to advise.

Judgment, from judgment-book.

Circuit court of the United States, fifth circuit and district of Louisiana. April term, 1872.

NEW ORLEANS, *Wednesday, May* 1, 1872.

Court met pursuant to adjournment. Present, honorable E. H. Durell, dist. judge.

W. E. SHROPSHIRE ET ALS., LIQUIDATING COMmissioners of the Pelican Mut. Ins. Co., *vs.* S. A. STOCKDALE. } No. 6526.

For the reasons assigned in the written opinion of the court, this day delivered and on file, in the case of the Home Mutual Insurance
22 Company vs. this defendant, No. 6525 of the docket, it is ordered, adjudged, and decreed that the plaintiffs, W. E. Shropshire et als., liquidating commissioners of The Pelican Mutual Insurance Company, do recover from the defendant, Sidney A. Stockdale, the sum of five hundred and fifty dollars, with 5 % interest from 19th January, 1870, till paid, and costs of suit.

And it appearing that the defendant is collector of internal revenue for the first collection district of Louisiana, and that this action was brought against the said defendant in his official character and capacity, for money paid to him and by him to the Treasury of the United States,

in the performance of his official duty as such collector of internal revenue, and that he had reasonable and probable cause for collecting from said plaintiffs the said money now recovered back from him by the aforesaid judgment:

It is, therefore, further ordered that no execution, or other writ for the enforcement of the judgment, issue against the said defendant, but that the same be provided for and paid out of the proper appro-

23 priation from the Treasury, as provided by law in such cases.

Judgment rendered May 1st, 1872.

Judgment signed May 6th, 1872.

(Signed) E. H. DURELL, *Judge.*

24 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 23 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The Liquidating Commissioners of Pelican Mutual Insurance Company vs. Sidney A. Stockdale, No. 6526 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 18th day of November, A. D. 1872.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 18th day of November, A. D. 1872.

E. H. DURELL, *Judge.*

25 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between William E. Shropshire, Samuel M. Todd, and S. N. Moody, liquidating commissioners of the Pelican Insurance Company, *are* plaintiffs, and Sidney A. Stockdale, collector of United States internal revenue in & for the first collection district of Louisiana, is defendant, a manifest error hath happened, to the great damage of the said Sidney A. Stockdale, defendant, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this

behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 29th day of April, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 6526. Sidney A. Stockdale, plaintiff in error, versus William E. Shropshire, Samuel M. Todd, and S. N. Moody, liquidating commissioners of the Pelican Insurance Company, defendants in error. Writ of error. Filed May 13, 1872. F. A. Woolfley, clerk.

26 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to William E. Shropshire, Samuel M. Todd, and S. N. Moody, liquidating commissioners of the Pelican Insurance Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Sidney A. Stockdale, collector of United States internal revenue in & for the first collection district of Louisiana, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 13th day of May, in the year of our Lord one thousand eight hundred and seventy-two.

E. H. DURELL, *Judge.*

27 (Indorsed:) United States circuit court. No. 6526. Sidney A. Stockdale, plaintiff in error, vs. W'm E. Shropshire, Sam'l M. Todd, & S. N. Moody, liquidating commissioners of the Pelican Insurance Company, defendant in error. Citation.

Marshal's return.

Received May 14, '72, by the U. S. marshal, and, on the 16th day of June, 1872, served a copy of within citation of appeal personally on S. N. Moody, one of the liquidating commissioners of the Pelican Insurance Company.

New Orleans, June 24, 1872.

S. W. REED,
D'y U. S. Marshal.

On the 24th day of June, 1872, personally appeared before me, the subscriber, S. W. Reed, & makes oath that he delivered a true copy of the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to & subscribed before me.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 279. Sidney A. Stockdale, collector of internal revenue, plaintiff in error, vs. W'm E. Shropshire, Sam'l M. Todd, & S. N. Moody, liquidating comm'rs of the Pelican Insurance Company. Louisiana C. C. U. S. Filed 27th November, 1872.

Supreme Court of the United States.

No. 279.

SIDNEY A. STOCKDALE, COLLECTOR OF INTERNAL REVENUE,
Plaintiff in Error,

VERSUS

LIQUIDATORS OF PELICAN INSURANCE COMPANY OF NEW ORLEANS.

In Error to the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR DEFENDANT IN ERROR.

CHARLES CASE,
Counsel.

J. D. ROUSE,
Attorney.

CLARK & HOFELINE, BOOK PRINTERS, 9 BANK PLACE.

Supreme Court of United States.

No. 279.

SIDNEY A. STOCKDALE, Collector of Internal Revenue,
Plaintiff in Error,

VERSUS

LIQUIDATORS OF PELICAN INSURANCE COMPANY OF NEW ORLEANS.

In Error to the Circuit Court of the United States for the District of Louisiana.

This suit was brought by the defendant in error (plaintiff below) to recover money paid to the plaintiff in error, collector of internal revenue, as taxes upon a certain dividend declared by said Company the 10th day of January, 1870.

A jury was waived, and the facts agreed upon substantially as follows:

The plaintiffs below are liquidators of a corporation engaged in the business of fire and marine insurance.

Upon the 10th day of January, 1870, the Company declared a dividend out of the earnings which had accrued to it from the 1st day of January, 1869, to the 31st day of

December, 1869, amounting to the sum of eleven thousand dollars, which dividend was payable on the 1st day of March, 1870, to the shareholders, without deduction.

Upon such dividend the assessor assessed a tax of five per centum, amounting to the sum of five hundred and fifty dollars.

The plaintiff in error demanded payment of said tax, and notified said Insurance Company, that if the same were not paid he would distrain and sell the property of said Insurance Company to make such tax; and thereupon said Company paid the said tax.

The Company appealed to the Commissioner to refund the same, which appeal was rejected, and this suit brought within the time limited.

Upon these facts the Circuit Court gave judgment in favor of the Insurance Company.

We assert the correctness of that judgment, and in support thereof maintain the following propositions of law:

I.

The tax of five per centum imposed upon the dividends of Insurance Companies by section 120 *of the act of June* 30, 1864, *as amended July* 13, 1866, *is a tax upon the income of the Stockholder, and not a tax upon the Corporation.*

In this case the validity of the tax is sought to be maintained under the provisions of section 120, act of June 30, 1864, as amended July 13, 1866. 14 *U. S. Statutes*, 138.

We are not aware of any adjudication upon the construction of this section, but the question as to the proper construction of section 122, of the same act, which is very similar, has been often before the courts, and several times before this Court. Attention is respectfully called to the discussion of this subject in our brief, in *Stockdale vs. Crescent City Railroad Co.*, No. 270, which is hereto annexed to avoid repetition of the argument herein. What is there said is greatly strengthened, by comparison of section 120 with section 122. The language of section 120 is, "That there shall be levied and collected a tax of five per centum *on all dividends* in scrip or money thereafter declared due, * * * as part of the earnings, income, or gains of any bank, trust company, savings' institution, and of any fire, marine, life, inland insurance company," etc., etc. It also requires the banks, insurance companies, etc., to pay the tax, and authorizes them to withhold the same from payments of dividends, etc.

Section 122 enacts that any railroad company, etc., indebted for money represented by bonds, etc., upon which interest is to be paid; or any such company that may have declared any dividend, shall be subject to pay a tax of five per centum thereon. Whatever doubt may be raised as to the construction of section 122, there certainly can be no construction which will warrant the theory that section 120 imposed the tax upon the corporations named.

II.

The tax upon incomes imposed by the act of June 30,

1864, *as amended, expired by limitation the thirty-first day of December*, 1869.

The argument in support of this proposition is to be found in our brief in No. 270, p. hereto annexed, to which we again respectfully ask a reference.

III.

There has been no legislation which could effect an extension of the time during which such tax could be imposed.

IV.

The constitutional rule requiring uniformity in excise taxes is violated by the act of July 14, 1870.

V.

1.—*Corporations had no authority to withhold tax from their dividends or interest, after the expiration of the act of June* 30, 1864.

2.—*Congress could not, after their payment of dividends or interest, without deduction of tax, retroactively subject the corporations to liability therefor.*

The argument in support of these propositions, is contained in our brief in No. 270, hereto annexed,—commencing at p. et seq., whereto we now refer.

For these reasons the judgment of the Circuit Court should be affirmed.

Respectfully submitted.

J. D. ROUSE,
Attorney for Defendant in Error.

CHARLES CASE,
Counsel.